

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA,)
)
 Plaintiff,)
)
v.) **Case No. 05-cv-329-GKF(SAJ)**
)
TYSON FOODS, INC., et al.,)
)
 Defendants.)

**STATE OF OKLAHOMA'S OPPOSITION TO PETERSON FARMS, INC.'S MOTION
FOR PROTECTIVE ORDER [DKT #1775]**

Plaintiff, the State of Oklahoma, ex rel. W.A. Drew Edmondson, in his capacity as Attorney General of the State of Oklahoma and Oklahoma Secretary of the Environment J.D. Strong, in his capacity as the Trustee for Natural Resources for the State of Oklahoma ("the State") hereby responds to Peterson Farms, Inc.'s Motion for Protective Order.

The four requests for production served on Simmons Foods Inc. (“Simmons”) and Peterson Farms, Inc. (“Peterson”) requested similar material from each defendant, and the meet and confer process regarding these four requests involved counsel for both Simmons and Peterson. *See* Ex. 1 (Requests for Production to Peterson). Thus, the facts as to each of these two Defendants are very similar. Accordingly, rather than repeat the same arguments on behalf of the State in this response, the State hereby incorporates herein its opposition to Simmons’ motion for protective order. Peterson’s motion raises two issues that are not included in Simmons’ motion, and those are addressed below.

First, Peterson argues that *In re REMEC, Inc., Securities Litigation*, 2008 WL 2282647 (S.D. Cal. May 30, 2008), supports its position that discovery regarding the Peterson - Simmons transaction should not be allowed. It does not. While in *In re REMEC*, the court limited some of

the discovery sought from a third party in a securities fraud case, the limitations were regarding topics such as the conditions of the retention of the defendant's third party financial advisor and documents related to any meetings, presentations, conferences and webcasts provided by the third party financial advisor to the defendant. Significantly, however, the court ultimately did allow discovery of substantial amounts of information regarding the defendant's acquisition of another company from a third party. *In re REMEC*, 2008 WL 2282647, *5 ("Third Party Needham is directed to produce all documents relevant to the claims and defenses in this case that are responsive to Requests Nos. 4, 5, 6, and 9 . . ."). The discovery requested in these requests for production included "[a]ll documents concerning REMEC's acquisition of other companies . . . and/or any of their assets," "[a]ll documents concerning any potential or actual restructuring, potential or actual merger, or potential or actual sale of any assets by REMEC," and "[a]ll documents concerning any due diligence you conducted on REMEC." *See id.* at *4. The discovery permitted in *In re REMEC* is more like the four requests for production in this case than the discovery not permitted in *In re REMEC*. Thus, *In re REMEC* actually supports the State's position for production of materials regarding the transaction between Peterson and Simmons.

The second point made by Peterson in its motion is that it is no longer in the live poultry production business. *See e.g.*, Mtn., p. 5 ("Peterson farms is no longer in the live production business."). At the same time, however, Peterson claims that disclosure of the documents pertaining to the sale of the live production business could create a high risk of prejudice for Peterson. *See* Mtn. p. 4. Since the State is seeking information regarding the transaction between Simmons and Peterson, and Peterson claims that it sold its live production business, and it is no longer in the live production business, it makes little sense that Peterson would suffer any

prejudice from producing this information. As addressed in the State's response to Simmons' motion, the arguments regarding confidentiality concerns are unfounded; they are even more unfounded due to the fact that Peterson would have little prejudice to suffer even without the confidentiality agreement in place.

For the reasons set forth herein and in the State's opposition to Simmons' motion for protective order, Peterson's motion for protective order should be denied.

Respectfully Submitted,

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